IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 754 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NEW INDIA INSURANCE COMPANY & 1 - Appellant(s)
Versus
GIRISHKUMAR CHHOTALAL PATEL - Defendant(s)

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Appearance :
MR SUNIL B PARIKH for Appellant(s) : 1,MR BR SHAH for Appellant(s) : 2,
M/S.SURTI & VAKHARIA for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 21/08/2006

ORAL JUDGMENT

1. By way of this appeal, the appellant have challenged the judgment and award passed by the Motor Accident Claims Tribunal in Motor Accident

Claim Tribunal No. 2 (Auxi) Ahmedabad, directing the appellants to pay jointly and severally Rs 34,300/- with 9% interest from the date of application till the realisation with cost.

2. The original claimant-present respondent had filed claim petition claiming compensation to the tune of Rs. 80,000/- in respect of the accident which occurred on 5.7.82, while the original applicant was riding on his scooter bearing No. G.J K 95 with a pillion rider from Majoor village to Calico Mill. At that time a scooter bearing G.A.K 5225 coming from the opposite direction in great speed dashed with the original applicant as a result of which he sustained grievous injuries. The claim petition came to be filed under the said circumstance. The Tribunal after hearing the parties passed the aforesaid award.

3. Learned counsel for the appellant has contended that the Tribunal erred in holding that the incident has occurred due to rash and negligent driving of the appellant No. 2 Abbas Ali Fakruddin Morawala the driver of scooter bearing registration No . G.A.K 5225. Dr. Joshi that

according to the opponent after the incident opponent had gone to bone setter Shri Narharibhai and then opponent was brought before Dr. Joshi for the further treatment.

4. He further contended that the Tribunal has also failed to appreciate that opponent had not examined Dr. Narharibhai nor did he examine Dr. Joshi so as to establish that the claimant had fallen down from the scooter or to establish that claimant had a accidental injury.

5. He has also further contended that the Tribunal failed to appreciate the conduct and behaviour of the opponent after the accident had occurred. The opponent knowing full well about the nature of accident hidden these facts before the doctors. If at all the accident happened due to the rash and negligent driving of the appellant No. 2 opponent would not have certainly told the doctors about the true facts of the accident or appellant No. 2 might have approached the Government Hospital where the medico-legal cases are entertained.

6. Mr. Parikh for the appellant contended that

the FIR is lodged almost 17 days after the incident i.e the incident occurred on 5.7.82 and the complaint was filed on 22.7.83.

7. None appeared for the respondent. As a result of hearing and perusal of the record it is found that FIR was lodged at a belated stage. Though treatment was taken the doctors were not examined to prove the accidental injury. Therefore the accident in question is doubtful and the original claimant has failed to establish the same.

8. In the premises aforesaid, the appeal is allowed. The award of the Tribunal are quashed and set aside qua liability of the insurance company-present appellant. However, if the FDR is withdrawn by the original claimants, the same shall not be recovered from the claimant and in that case it will be open for the insurance company to recover the same from the owner and the amount is not withdrawn. It will be open for the claimants to recover the same from the owner. The award of the Tribunal is modified accordingly. No order as to costs.

(K.S.Jhaveri,J)

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